

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE**

NIKKI BOLLINGER GRAE, Individually and) Civil Action No. 3:16-cv-02267
on Behalf of All Others Similarly Situated,)
Plaintiff,) Honorable Aleta A. Trauger
vs.) Magistrate Judge Jeffrey S. Frensley
CORRECTIONS CORPORATION OF)
AMERICA, et al.,) DEMAND FOR JURY TRIAL
Defendants.)

)

DECLARATION OF MORGAN E. WHITWORTH IN SUPPORT OF DEFENDANTS'
MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO PRECLUDE
DEFENDANTS FROM RELYING ON AN ADVICE OF COUNSEL DEFENSE

I, Morgan E. Whitworth, declare as follows:

1. I am over 18 years of age and am competent to testify as to the matters stated in this Declaration. I am an associate at the law firm of Latham & Watkins LLP, one of the law firms representing Defendants CoreCivic, Inc. (“CoreCivic”), Damon T. Hininger, David M. Garfinkle, Todd J. Mullenger, and Harley G. Lappin (collectively, “Defendants”).
2. On June 2, 2020, the Court held a telephonic conference. During that conference, Defendants told Plaintiffs and the Court that they have not and do not intend to assert an advice of counsel defense.
3. On June 11, 2020, Plaintiffs sent Defendants a stipulation and proposed order regarding an advice of counsel defense. A true and correct copy of that stipulation and proposed order is attached as **Exhibit A**.
4. Defendants met and conferred with Plaintiffs regarding their stipulation and proposed order on June 24, 2020. During this meet and confer, Defendants explained their position that Plaintiffs’ stipulation and proposed order was broader than necessary to foreclose an advice of counsel defense.
5. On June 25, 2020, Defendants sent Plaintiffs a revised version of the stipulation and proposed order. A true and correct copy of that revised stipulation and proposed order is attached as **Exhibit B**.
6. To date, Defendants have produced more than 420,000 documents from 65 custodians. Of those documents, 8,750 are currently listed on Defendants’ privilege log.
7. A true and correct copy of CoreCivic’s organizational chart, introduced as Exhibit 99 during the deposition of Bart VerHulst, is attached as **Exhibit C**.

8. A true and correct copy of excerpted portions of the transcript from the deposition of Bart VerHulst, which occurred on November 5, 2019, is attached as **Exhibit D**.

9. A true and correct copy of excerpted portions of the transcript from the deposition of Natasha Metcalf, which occurred on December 19, 2019, is attached as **Exhibit E**.

10. Defendants produced 17,369 emails for which Ms. Metcalf appears on the “to,” “from,” or “cc” fields. 891 of these emails were withheld or redacted for privilege.

11. Defendants produced an additional 10,243 emails on which Messrs. Tony Grande, Bart VerHulst, and Jeb Beasley are listed in the “to,” “from,” or “cc” fields and Ms. Metcalf is not.

12. A true and correct copy of excerpted portions of CoreCivic’s 2016 Annual Report filed with the SEC on Form 10-K is attached as **Exhibit F**.

13. Don Murray was listed in Defendants’ initial disclosures, which were served on February 23, 2018. Defendants produced 10,231 emails for which Mr. Murray is listed in the “to,” “from,” or “cc” fields. 297 were withheld or redacted for privilege.

14. Defendants produced an additional 2,414 emails on which Mr. Murray’s deputy, Ward Cullum, is listed in the “to,” “from,” or “cc” fields and Mr. Murray is not. 79 were withheld or redacted for privilege.

15. A true and correct copy of excerpted portions of the transcript from the deposition of Cameron Hopewell, which occurred on January 17, 2020, is attached as **Exhibit G**.

16. A true and correct copy of the email dated August 1, 2013 with subject line, “Disclosure Committee – Form 10-Q Review – Agenda and Draft May Minutes,” introduced as Exhibit 397 during the deposition of Todd Mullenger, is attached as **Exhibit H**.

17. True and correct copies of certain Disclosure Committee meeting minutes and agendas produced in this action are attached as **Exhibit I**, and consist of the following:

- “Minutes of the Meeting of the Disclosure Committee of Corrections Corporation of America May 2, 2014,” beginning with Bates stamp CORECIVIC_1188965;
- “Corrections Corporation of America Disclosure Committee Review Meeting Agenda August 1, 2014 – 10-Q,” beginning with Bates stamp CORECIVIC_1188969;
- “Minutes of the Meeting of the Disclosure Committee of Corrections Corporation of America May 1, 2015,” beginning with Bates stamp CORECIVIC_2001294;
- “Corrections Corporation of America Disclosure Committee Review Meeting Agenda October 29, 2015 – 10-Q,” beginning with Bates stamp CORECIVIC_1105823;
- “Corrections Corporation of America Disclosure Committee Review Meeting Agenda February 16, 2016 – 2015 Annual Report on Form 10-K,” beginning with Bates stamp CORECIVIC_1449049;
- “Minutes of the Meeting of the Disclosure Committee of Corrections Corporation of America October 29, 2015,” beginning with Bates stamp CORECIVIC_2001554;
- “Minutes of the Meeting of the Disclosure Committee of Corrections Corporation of America April 29, 2016,” beginning with Bates stamp CORECIVIC_1169640; and
- “Corrections Corporation of America Disclosure Committee Review Meeting Agenda July 29, 2016 – 10-Q,” beginning with Bates stamp CORECIVIC_1169647.

18. A true and correct copy of excerpted portions of the transcript from the deposition of Damon Hininger, which occurred on March 3, 2020, is attached as **Exhibit J**.

19. A true and correct copy of excerpted portions of the transcript from the supplemental deposition of Damon Hininger, which occurred on July 30, 2020, is attached as **Exhibit K**.

20. A true and correct copy of excerpted portions of the transcript from the deposition of David Garfinkle, which occurred on July 31, 2020, is attached as **Exhibit L**.

21. A true and correct copy of excerpted portions of the transcript from the deposition of Todd Mullenger, which occurred on March 13, 2020, is attached as **Exhibit M**.

22. Pursuant to 26 U.S.C. §1746, I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Executed on August 24, 2020 in Jackson, Wyoming.



Morgan E. Whitworth

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing document was made upon the following Filing Users through the Electronic Filing System:

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this 24th day of August, 2020.

/s/ Steven A. Riley
Steven A. Riley